

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
BEAUMONT DIVISION

CHAD HATTEN	§	
VS.	§	CIVIL ACTION NO. 1:07-CV-935
UNITED STATES OF AMERICA	§	

MEMORANDUM ORDER OVERRULING PLAINTIFF’S OBJECTIONS AND ADOPTING
THE MAGISTRATE JUDGE’S REPORT AND RECOMMENDATION

Plaintiff Chad Hatten, a federal prisoner, proceeding *pro se* and *in forma pauperis*, filed this civil action pursuant to the Federal Tort Claims Act (FTCA) against the United States of America.

The court ordered that this matter be referred to the Honorable Keith F. Giblin, United States Magistrate Judge, at Beaumont, Texas, for consideration pursuant to applicable laws and orders of this court. The magistrate judge has submitted a Report and Recommendation of United States Magistrate Judge. The magistrate judge recommends granting defendant’s motion for summary judgment.

The court has received and considered the Report and Recommendation of United States Magistrate Judge, along with the record and the pleadings. Plaintiff filed objections to the magistrate judge’s Report and Recommendation.

The court has conducted a *de novo* review of the objections in relation to the pleadings and the applicable law. *See* FED. R. CIV. P. 72(b). After careful consideration, the court concludes the objections are without merit. The decision to place an inmate in protective custody is a discretionary function for which the United States has not waived sovereign immunity. Although Title 18 U.S.C. § 4042(a) requires the Bureau of Prisons (BOP) to provide for the safekeeping, care, and subsistence

of federal prisoners, the statute does not dictate the manner in which the duty must be fulfilled. *See Santana-Rosa v. United States*, 335 F.3d 39, 44 (1st Cir. 2003) (noting that Section 4042 leaves the BOP room for judgment); *Cohen v. United States*, 151 F.3d 1338, 1342 (11th Cir. 1998), *cert. denied*, 526 U.S. 1130 (1999) (concluding that the BOP has discretion in the means it may use to fulfill the duty to safeguard prisoners).

ORDER

Accordingly, plaintiff's objections are **OVERRULED**. The findings of fact and conclusions of law of the magistrate judge are correct, and the report of the magistrate judge is **ADOPTED**. Defendant's motion for summary judgment is **GRANTED**. A final judgment will be entered in this case in accordance with the magistrate judge's recommendation.

So **ORDERED** and **SIGNED** this **8** day of **March, 2011**.



Ron Clark, United States District Judge